

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

[illegible]

Cox, J. – Eva Bible appeals the trial court order terminating her parental relationship with daughter N.D.C. She argues that the Department of Social and Health Services (“Department”) failed to show (1) little likelihood that conditions would be remedied so that N.D.C. could be returned to Bible in the near future, (2) that continuation of the parent-child relationship clearly diminished N.D.C.’s prospects for early integration into a stable and permanent home, and (3) that all necessary services, reasonably available, capable of correcting Bible’s parental deficiencies within the foreseeable future were expressly and understandably offered or provided. She also argues that the Department failed to show that termination was in N.D.C.’s best interest. Because substantial evidence

supports the trial court's findings, we affirm the termination order.

In September 2008, Eva Bible's parental rights to her two other children were terminated by court order. The court's findings of fact stated that Bible had "a lengthy criminal history and a lengthy history of substance abuse."

Bible gave birth prematurely to N.D.C. on October 20, 2008. After her birth, N.D.C. was admitted to the Pediatric Interim Care Center for two months because she had difficulty feeding. After N.D.C. left the center, she resided in out-of-home care. N.D.C. has never lived with Bible.

Bible agreed to a dependency and dispositional order in January 2009. The court order required Bible to participate in certain services, including random urinalysis two times per week, a drug/alcohol evaluation and resulting treatment recommendations, individual psychotherapy and resulting treatment recommendations, and parenting classes.

In October 2009, Bible pleaded guilty to delivery of cocaine in July 2008, when she was pregnant with N.D.C. She received residential treatment as part of a drug offender sentencing alternative (DOSA).

Bible completed a drug and alcohol evaluation in November 2009 and parenting classes in January 2010. She also completed approximately one week of inpatient treatment in February 2010 and outpatient treatment in July 2010. But in October 2010 Bible relapsed and tested positive for cocaine. She also tested positive for marijuana in February and March 2011.

The Department referred Bible for random urinalysis, drug and alcohol

evaluation, and mental health services in July 2011 and September 2011. But Bible's community corrections officer testified that Bible did not attend her drug treatment program. Bible participated in an intake mental health assessment, but she failed to follow through with any other treatment.

The Department filed a petition for termination of the parent-child relationship in October 2010. During a multiple day trial in September 2011, the court heard testimony from nine witnesses and considered 100 exhibits. The court then entered detailed findings of fact and conclusions of law, and ordered termination of the parent-child relationship between Bible and N.D.C.

Bible appeals.

### **TERMINATION OF PARENTAL RIGHTS**

Bible argues that the Department did not prove all of the elements necessary to terminate her parental rights, and the trial court consequently erred when it terminated her parental rights. We disagree.

The United States Constitution protects parental rights as a fundamental liberty interest.<sup>1</sup> To terminate parental rights, the Department must satisfy a two-pronged test.<sup>2</sup> The first prong requires the Department to prove six statutory elements enumerated in RCW 13.34.180(1) with clear, cogent, and convincing evidence.<sup>3</sup>

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<sup>1</sup> Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

<sup>2</sup> In re Dependency of K.N.J., 171 Wn.2d 568, 576, 257 P.3d 522 (2011).

<sup>3</sup> Id. at 576-77.

If the Department satisfies the first prong, the court proceeds to the second prong to determine whether termination is in the child's best interest.<sup>4</sup> The Department must prove this second prong by a preponderance of the evidence.<sup>5</sup>

An appellate court will affirm a termination order if there is substantial evidence that the trial court could reasonably have found to be clear, cogent, and convincing.<sup>6</sup> Evidence is clear, cogent, and convincing when the evidence shows the ultimate fact in issue to be "highly probable."<sup>7</sup> Because the fact finder has the advantage of observing the witnesses, deference to the trial court is particularly important in appellate review of termination decisions.<sup>8</sup>

*Likelihood of Remedying Conditions in the Near Future*

Bible argues that the Department failed to show that her drug and mental health issues could not be remedied in the near future. She argues that she "significantly addressed" these deficiencies. We disagree.

Under RCW 13.34.180(1)(e), one of the statutory elements that the Department must prove is that "there is little likelihood that conditions will be

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<sup>4</sup> Id. at 577; RCW 13.34.190(1)(b).

<sup>5</sup> In re Welfare of A.B., 168 Wn.2d 908, 911, 232 P.3d 1104 (2010).

<sup>6</sup> In re the Matter of H.J.P., 114 Wn.2d 522, 532, 789 P.2d 96 (1990).

<sup>7</sup> In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995) (quoting In re Sego, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)).

<sup>8</sup> Id. at 144.

remedied so that the child can be returned to the parent in the near future.” The focus of this element is whether a parent has corrected his or her parental deficiencies.<sup>9</sup>

“A determination of what constitutes the near future depends on the age of the child and the circumstances of the placement.”<sup>1</sup>

Here, the court focused on three parental deficiencies: (1) Bible’s substance abuse relapse and lack of further treatment, (2) her failure to follow through with mental health treatment, and (3) her inconsistent visits with N.D.C. Although there was testimony that Bible improved some of her parental deficiencies, the progress she made was not substantial enough to indicate that she would be a fit parent in the near future.

Bible testified that she started using drugs when she was 17 years old. During the year before the termination hearing, Bible had several relapses in her sobriety. She tested positive for cocaine in October 2010, and she tested positive for marijuana in February and March 2011. Bible’s community corrections officer testified that Bible enrolled in a drug treatment program after her relapse, but she was discharged from the program because she did not attend. The social worker testified that she did not believe that Bible could be “clean and sober” if given six more months.

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<sup>9</sup> In re Dependency of T.R., 108 Wn. App. 149, 165, 29 P.3d 1275 (2001).

<sup>1</sup> In re Dependency of T.L.G., 126 Wn. App. 181, 204, 108 P.3d 156 (2005); see, e.g., In re Welfare of Hall, 99 Wn.2d 842, 843, 850-51, 664 P.2d 1245 (1983) (eight months not in foreseeable future of four-year-old); In re Dependency of P.A.D., 58 Wn. App. 18, 27, 792 P.2d 159 (1990) (six months not in near future of fifteen-month-old).

Although Bible engaged in some mental therapy, substantial evidence shows that her efforts were wanting. A social worker at Harborview Medical Center testified that Bible participated in four mental health treatment sessions focused on trauma starting in November 2009 and ending in July 2010. During the intake assessment, Bible told the social worker that she had not used any substances within the past 12 months despite the fact that she had multiple positive urinalysis during that time. When Bible was discharged, the social worker recommended general therapy. Bible participated in an intake assessment at Sound Mental Health, but she failed to complete any treatment after this assessment.

Finally, during the period of parental dependency, Bible visited N.D.C. on only half of her available visits. Of the visits Bible attended she was late to more than half. Bible was also suspended 15 times for missing three visits within a visitation contract period. At one point, the Department moved the visits to a location more convenient for Bible, but Bible's visitation record did not significantly improve. A social worker, who has worked at the Department for three years, testified that Bible had the "the most suspensions" she had seen in any of her cases. During the termination hearing, Bible failed to timely confirm a visit with N.D.C., resulting in the cancellation of her visit and her fifteenth suspension.

Given the overwhelming evidence of Bible's substance abuse, mental health issues and its consequent effect on her visitation with N.D.C., we

conclude that substantial evidence supports the trial court's finding that the conditions of the parent-child relationship were not likely to be remedied in the near future.

Bible argues that she "acknowledged her relapses, understood the problem, and corrected it." She contends that her relapses "were incidents of ***divergence from*** successful overall sobriety." But the Department presented evidence that contradicts Bible's characterization of her sobriety. The log of urinalysis results showed that Bible did not satisfy the court's order of testing twice a week for 120 days. And as noted above, the Department's social worker testified that she did not think that Bible could be "clean and sober" if given six more months. Thus, there was substantial evidence that Bible was unlikely to remedy her substance abuse issues.

Bible argues that she fully participated in the mental health program at Harborview, and "her efforts led to discharge with an entirely proper recommendation that she needed only optional general counseling." While Bible was discharged from the program because she did not have a need for trauma focused therapy, the social worker's recommendation for general therapy does not appear to be "optional." Bible completed an intake assessment for general therapy, but she failed to continue any further treatment. Thus, there was substantial evidence to show that Bible failed to follow through with her mental health treatment.

Bible argues that the Department "may not simply rely on the parent's

past poor performance in the face of more recent improvements in addressing parental deficiencies, in contending that there is little likelihood conditions will be remedied under RCW 13.34.180(1)(e).”<sup>11</sup> But the trial court relied on testimony regarding Bible’s relapses and lack of follow through for drug and mental health treatment, which was in the same year as the termination hearing. Further, the Department submitted evidence to show that her visits continued to be inconsistent leading up to the termination hearing. This recent evidence substantially supports the court’s findings.

*Prospects for Early Integration into a Stable and Permanent Home*

Bible contends that her participation in a mental health program did not “diminish N.D.C.’s prospects of early integration into a stable home, because [she] was not precluded from safely parenting by any mental health issues.” We disagree.

Under RCW 13.34.180(1)(f), the Department must also prove that “continuation of the parent and child relationship clearly diminishes the child’s prospects for early integration into a stable and permanent home.” This statutory element is mainly concerned with the continued effect of the legal relationship between the parent and child.<sup>12</sup> “While a detrimental personal relationship would not be irrelevant, this factor is mainly concerned with the

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<sup>11</sup> Motion for Accelerated Review under RAP 18.13A and Brief in Support Thereof at 18 (citing In re Welfare of C.B., 134 Wn. App. 942, 143 P.3d 846 (2006); In re Welfare of A.G., 155 Wn. App. 578, 229 P.3d 935 (2010)).

<sup>12</sup> In re Dependency of A.C., 123 Wn. App. 244, 250, 98 P.3d 89 (2004).



continued effect of the **legal** relationship between parent and child, as an obstacle to adoption; it is especially a concern where children have potential adoption resources.”<sup>13</sup>

Further, as discussed above, where the Department proves the element in RCW 13.34.180(1)(e), that “there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future,” it “necessarily follows” that continuation of the parent-child relationship diminishes the child’s prospect for early integration into a permanent home.<sup>14</sup>

Even if the RCW 13.34.180(1)(e) finding was not dispositive, substantial evidence supports the court’s finding that the parent-child relationship was diminishing N.D.C.’s prospect for early integration into a permanent home. N.D.C. was in foster care at the time of the hearing, which is a temporary arrangement.<sup>15</sup> The Department’s social worker testified that N.D.C. is adoptable, and her foster home could be a permanent home for N.D.C. Further, the evidence showed that N.D.C. is bonded with her placement family. Thus, the legal relationship between Bible and N.D.C. is an obstacle to N.D.C. being placed in a permanent and stable home.

Bible argues that her participation in mental health treatment does not diminish N.D.C.’s prospect of early integration into a stable home because she

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<sup>13</sup> Id.

<sup>14</sup> In re Dependency of J.C., 130 Wn.2d 418, 427, 924 P.2d 21 (1996).

<sup>15</sup> See, e.g., In re Dependency of A.V.D., 62 Wn. App. 562, 569, 815 P.2d 277 (1991).

“was not precluded from safely parenting by any mental health issues.” But as discussed above, this statutory element is mainly focused on the **legal** relationship, not the personal relationship, between parent and child.<sup>16</sup> Bible’s argument addresses whether any parental deficiencies can be remedied in the near future under RCW 13.34.180(1)(e), which was discussed earlier. Thus, it is not persuasive.

*Services Capable of Correcting Parental Deficiencies in the Foreseeable Future*

Bible argues that the Department failed to provide the services necessary to remedy her parental deficiencies. She asserts that the Department failed to provide services to address N.D.C.’s “special needs,” which prevented bonding between Bible and N.D.C. We disagree.

Under RCW 13.34.180(1)(d), another statutory element that the Department must prove is that “the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided.” Such services must be tailored to the individual parent’s needs.<sup>17</sup> To meet its burden, the Department must show either that it offered the parent remedial services but the parent did not avail himself or herself of them, or that the parent waived his or her right to such services.<sup>18</sup> At a minimum, the

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<sup>16</sup> See In re Dependency of A.C., 123 Wn. App. at 250.

<sup>17</sup> In re Dependency of T.R., 108 Wn. App. at 161.

<sup>18</sup> In re Welfare of S.V.B., 75 Wn. App. 762, 770, 880 P.2d 80 (1994).

Department must provide a list of agencies that provide the services.<sup>19</sup> “[T]he court may consider any service received, from whatever source, bearing on the potential correction of parental deficiencies.”<sup>20</sup>

Here, N.D.C. has had past issues with overstimulation, which meant she was sensitive to “activities, bright lights, and loud noises.” She also participates in speech and physical therapy. The Department’s social worker testified that she told Bible about N.D.C.’s special needs. The social worker offered Bible a parenting coach, but Bible initially refused this service. Bible suggested three alternative coaches but none were available. Then, the social worker offered to have a therapist participate in Bible’s visits with N.D.C., but Bible also refused this service. Bible testified that she felt that she did not need a parenting coach when the Department offered one. Eventually, the social worker asked the visitation supervisor to “step in” if N.D.C. was over-stimulated and give Bible “redirection skills.” This happened on several occasions.

In sum, there is substantial evidence that Bible did not avail herself of the services that were offered to address N.D.C.’s special needs.<sup>21</sup> Further, Bible received some services from the visitor supervisor. The court did not err in finding that the Department offered or provided all necessary and reasonably

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<sup>19</sup> In re Welfare of Hall, 99 Wn.2d at 850.

<sup>20</sup> In re Dependency of D.A., 124 Wn. App. 644, 651-52, 102 P.3d 847 (2004).

<sup>21</sup> See In re Dependency of S.V.B., 75 Wn. App. at 770.

available services capable of correcting Bible's parental deficiencies in the foreseeable future.

Bible argues that the coaching from the visitation supervisor was not an adequate service because the supervisor was not a parenting instructor for children with special needs. But as noted above, "the court may consider any service received, from whatever source, bearing on the potential correction of parental deficiencies."<sup>22</sup> Further, this type of service was only offered after Bible rejected a parenting coach and therapist.

### *Parental Unfitness*

Bible contends that the trial court's findings did not contain "any determination connecting her drug problem with any parenting deficiency" or "any particular mental instability or mental health issue resulting in an inability to care for N.D.C." She argues that these issues were not connected to her parental unfitness. We disagree.

As noted above, substantial evidence must support the trial court's findings.<sup>23</sup> "Evidence is substantial if, when viewed in the light most favorable to the party prevailing below, it is such that a rational trier of fact could find the fact" by the necessary degree of proof.<sup>24</sup> Here, the trial court explicitly found that Bible was "severely unfit to parent" N.D.C. As discussed above, Bible's

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<sup>22</sup> In re Dependency of D.A., 124 Wn. App. at 651-52.

<sup>23</sup> In re the Matter of H.J.P., 114 Wn.2d at 532.

<sup>24</sup> In re Dependency of E.L.F., 117 Wn. App. 241, 245, 70 P.3d 163 (2003).

substance abuse, lack of mental health treatment, and inconsistent visitation substantially support this finding. A rational trier of fact could find that there was clear, cogent, and convincing evidence that Bible was unfit to parent N.D.C. Further, current parental unfitness is implicitly established when the Department proves all six of the statutory elements.<sup>25</sup> The trial court, as discussed above, correctly determined that the Department proved all six elements. Consequently, there was also an implicit finding that Bible was unfit to parent.

*Best Interest of the Child*

Bible challenges the trial court's finding that termination was in N.D.C.'s best interest. Bible argues that she had established "some bond" with N.D.C. Because substantial evidence supports the trial court's finding, we disagree.

As an initial matter, Bible argues that the trial court prematurely reached this issue because the State had not established three of the six statutory elements set forth in RCW 13.34.180(1)(d), (e), and (f). But as discussed above, there was substantial evidence in the record to support the court's findings that these elements were proved by clear, cogent, and convincing evidence. Thus, the court properly reached the second prong of analysis: whether it was in N.D.C.'s best interest to terminate Bible's parental rights.<sup>26</sup>

A child has a right to "a safe, stable, and permanent home and a speedy resolution of any proceeding under" chapter 13.34 RCW.<sup>27</sup> When a parent has

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<sup>25</sup> In re Dependency of K.N.J., 171 Wn.2d at 576-77.

<sup>26</sup> See In re Welfare of A.B., 168 Wn.2d at 911.

failed to rehabilitate over a lengthy dependency period, a court is “‘fully justified’ in finding termination in the child’s best interests rather than ‘leaving [the child] in the limbo of foster care for an indefinite period’” while the parent seeks further rehabilitation.<sup>28</sup>

The trial court is afforded broad discretion in making a “best interests” determination, and its decision receives great deference on review.<sup>29</sup> The best interests of a child must be decided on the facts and circumstances of each case.<sup>3</sup>

Here, N.D.C. was almost three years old at the time of the termination hearing. She has never lived with Bible and has never had any unsupervised visits with Bible. At the time of the hearing, N.D.C. was living in foster care. N.D.C.’s case manager at Olive Crest and the Department’s social worker both testified that N.D.C. had bonded with her foster family.

Further, Bible’s actions leading up to the hearing did not demonstrate that she can provide a stable home for N.D.C. in the near future. As discussed above, Bible had several substance abuse relapses, and she failed to follow through with drug treatment. She also failed to follow through with her mental

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<sup>27</sup> RCW 13.34.020.

<sup>28</sup> In re Dependency of T.R., 108 Wn. App. at 167 (alteration in original) (quoting In re Dependency of A.W., 53 Wn. App. 22, 33, 765 P.2d 307 (1988)).

<sup>29</sup> In re Welfare of Young, 24 Wn. App. 392, 395, 600 P.2d 1312(1979).

<sup>3</sup> In re Dependency of A.V.D., 62 Wn. App. 562, 572, 815 P.2d 277 (1991).

health treatment, and her visits with N.D.C. were inconsistent.

To counter this evidence, Bible only asserts that she has “some bond” with N.D.C. She cites the visitation supervisor’s testimony, but this part of the record is mainly focused on Bible’s visitation record, not about any bond between Bible and N.D.C. Bible also cites her sister’s testimony. But this testimony shows that her sister has never met N.D.C., which would make it difficult for her to know whether N.D.C. has bonded with Bible.<sup>31</sup>

In sum, substantial evidence supports the trial court’s finding that terminating Bible’s parental rights was in N.D.C.’s best interest.

We affirm the order of termination.

Cox, J.

WE CONCUR:

Vaughan, J.

Leach, C. J.

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<sup>31</sup> Report of Proceedings (Sept. 14, 2011) at 468 (“I never got to meet [N.D.C.], so I can’t really say much about [N.D.C.], but from the visits and what I have been told and seen when I saw [Bible] at the visits, afterwards, you know, there is no reason why we are in here today.”).

